



May 23, 2000

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2000-2030

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 136002.

The Texas Department of Criminal Justice (the "department") received a request for the internal affairs investigation report of an attempted escape by a particular inmate on a specified date. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

Section 552.131 of the Act relates to inmates of the department. Section 552.131 provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.131(a). Section 552.029 of the Government Code provides in relevant part:

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<sup>1</sup>We presume that any responsive information not submitted to this office in connection with your request for this letter ruling has been released to the requestor. See Gov't Code §§ 552.301(e)(1)(D), 552.302. We caution you, however, that chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. See Gov't Code §§ 552.101, 552.352.

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure[:]

. . .

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). Thus, section 552.131 is explicitly made subject to section 552.029. Pursuant to section 552.029, "basic information" regarding an alleged crime involving an inmate is subject to required disclosure. Gov't Code § 552.029(8). In this instance, you state that the requested information relates to an ongoing investigation by the department's internal affairs division of the attempted escape. The submitted records reveal that the department categorized the attempted escape as a violation of a specific provision of the Penal Code. Therefore, basic information about the attempted escape is subject to required disclosure under section 552.029(8). Basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of the inmate and of department officials who were directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The rest of the submitted information is excepted from disclosure under section 552.131(a).

As we are able to make a determination under section 552.131, we do not consider your claim under section 552.108 of the Act.<sup>2</sup> This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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<sup>2</sup>We note, however, that section 552.108 does not except from public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The same types of "basic information" are subject to disclosure under both section 552.108(c) and section 552.029(8). See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

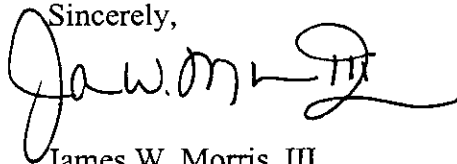
governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jawm-III", with a stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ljp

Ref: ID# 136002

Encl. Submitted documents

cc: Mr. Brian Olsen  
3011 11<sup>th</sup> Street, Suite 304  
Huntsville, Texas 77340  
(w/o enclosures)